

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Jon Wellenhoff.

American Transmission Company LLC

Docket No. TS06-13-000

ORDER ON REQUEST FOR CLARIFICATION

(Issued October 19, 2006)

1. On August 16, 2006, American Transmission Company LLC (AT),<sup>1</sup> filed a request for clarification of Order No. 2004<sup>2</sup> and section 358.5(b)(8) (Subsection 8).<sup>3</sup> Specifically, AT requests that the Commission “clarify” Subsection 8 to permit AT to discuss scheduling outages directly with the marketing representatives of affiliated and non-affiliated entities that own or operate generating facilities. We clarify that such communications are impermissible, as outside the scope of Subsection 8. Once the transmission system outage has been scheduled, approved by the Midwest ISO, and publicly posted on the “outage scheduler” section of the Midwest ISO’s OASIS, however, transmission function employees may directly contact marketing representatives to confirm that the generating unit affected by the transmission system outage will be available (or offline, as the case may be) during the transmission system outage.

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<sup>1</sup> AT made the instant filing by its corporate manager, ATC Management Inc.

<sup>2</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh’g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh’g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh’g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh’g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *appeal pending sub nom. National Fuel Gas Supply Corp. v. FERC*, (U.S.C.A., D.C. Circuit, Docket Nos. 04-1178, *et al.*) (Order No. 2004).

<sup>3</sup> 18 C.F.R. § 358.5(b)(8) (2006).

**Description of Filing**

2. AT is a Transmission Provider<sup>4</sup> subject to the Commission's Standards of Conduct.<sup>5</sup> According to AT, the Standards of Conduct "do not provide clear guidance" for Transmission Providers attempting to schedule planned outages.<sup>6</sup> Specifically, AT asserts that confusion arises from reading section 358.5(b)(1)<sup>7</sup> (the Prohibited Disclosure Rule) with Subsection 8. Under the Prohibited Disclosure Rule, Transmission Providers are prohibited from disclosing any information, including "information about available transmission capacity, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information" to Marketing or Energy Affiliates through non-public communications.<sup>8</sup> Under Subsection 8, however, Transmission Providers may "share information necessary to maintain the operations of the transmission system" with their Energy Affiliates.<sup>9</sup>

3. In the instant filing, AT requests that the Commission "clarify the nature and extent" of communications permitted under Subsection 8.<sup>10</sup> Specifically, AT requests that, prior to any public posting on OASIS, we allow transmission function employees to directly contact marketing representatives, including those of its seven Energy Affiliates, "to discuss the requirements of scheduled transmission system outages that affect the generating facilities," and to "directly request that such generating facilities be either available at a specified output level or be off line during the proposed transmission system outage."<sup>11</sup> AT also proposes that we permit its employees, again prior to any public posting on OASIS, to engage in discussions concerning "the required output level, the period during which the generator operation may be impacted, the duration of the impact and, if the period of time when the generator may be affected by the transmission system outage is unacceptable to the owner or operator of the generator . . . discussions

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<sup>4</sup> AT Filing at 1, 3.

<sup>5</sup> See 18 C.F.R. § 358.1, *et seq.* (2006).

<sup>6</sup> AT Filing at 6.

<sup>7</sup> 18 C.F.R. § 358.5(b)(1) (2006).

<sup>8</sup> *Id.*

<sup>9</sup> 18 C.F.R. § 358.5(b)(8) (2006).

<sup>10</sup> AT Filing at 6.

<sup>11</sup> *Id.* at 7.

covering generator operations that result in a mutually acceptable period of time when the transmission system outage may be scheduled.”<sup>12</sup> Then after AT schedules the outage, the Midwest ISO approves it, and the Midwest ISO publicly posts the outage on the “outage scheduler” section of the Midwest ISO’s OASIS, AT proposes to allow its employees to contact marketing representatives directly to confirm the status of the generating unit during the outage.<sup>13</sup>

4. AT contrasts its proposal with its current practice. In order to prevent information from being transferred in violation of the Prohibited Disclosure Rule, AT uses a “Confidential Data Access Agreement” to identify and designate generator employees with whom it can appropriately communicate.<sup>14</sup> According to AT, however, most employees with whom it communicates do not have the authority to commit generating units as part of a scheduled outage.<sup>15</sup> AT asserts that the necessary authority rests with marketing representatives “in nearly every instance,” and that coordinating an outage “requires a further conversation” between the employees it can communicate with, and “one or more marketing representatives who have the authority to commit or un-commit a unit.”<sup>16</sup> AT argues that this system is unnecessarily inefficient, burdensome, and conducive to costly delay. As AT is presently “engaged in a significant transmission construction program,” during which it will construct \$3.4 billion in new transmission facilities,<sup>17</sup> it requests that the Commission provide “a clear, concise, and efficient path for scheduling transmission element outages.”<sup>18</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* Communications with a Marketing or Energy Affiliate after OASIS postings are currently permitted under the Standards of Conduct. 18 C.F.R. §358.5(b)(1) (2006).

<sup>14</sup> AT Filing at 4.

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 10.

### **Notice, Interventions and Protests**

5. Notice of AT's filing was published in the *Federal Register*,<sup>19</sup> with interventions and protests due on or before September 15, 2006. Wisconsin Electric Power Company, Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively Interconnected Generators) moved to intervene and file comments. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>20</sup> the timely, unopposed motion to intervene serves to make Interconnected Generators parties to this proceeding.

6. Interconnected Generators agree with AT that the Standards "do not provide clear guidance" concerning the appropriate communications between AT and owners and operators of generating facilities.<sup>21</sup> Interconnected Generators reiterate that AT "is not seeking to communicate non-public transmission information to marketers."<sup>22</sup> Instead, Interconnected Generators argue, AT is seeking to directly communicate information that it is already indirectly communicating to marketers. According to Interconnected Generators, the only information that AT will be able to directly communicate under AT's proposed clarification is the need for a generator to increase or decrease output, the need to take a unit off-line, and the timing of these actions.<sup>23</sup>

### **Discussion**

7. We clarify that, prior to any public posting of the scheduled outage on OASIS, communications between transmission function employees and marketers as AT proposes are outside the scope of Subsection 8. AT and Interconnected Generators argue that ambiguity is created by juxtaposing the Prohibited Disclosure Rule and Subsection 8. We disagree. The Prohibited Disclosure Rule explicitly prohibits Transmission Providers from disclosing any information concerning their transmission system or the transmission system of another, "through non-public communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet website that is not contemporaneously available to the public, or through information on

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<sup>19</sup> *Federal Register*, 71 Fed. Reg. 51,590-91 (2006).

<sup>20</sup> 18 C.F.R. § 385.214 (2006).

<sup>21</sup> Interconnected Generators' Comments at 4.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

the OASIS or Internet website that is not at the same time publicly available.”<sup>24</sup> More to the point, the Prohibited Disclosure Rule specifically prohibits preferential access to “information about available transmission capacity, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information” as examples of information prohibited under the rule.<sup>25</sup>

8. Similarly, Subsection 8 is not as ambiguous as AT suggests. In Order No. 2004-B, we reiterated that Subsection 8 is intended to allow “information necessary to operate and maintain the transmission system on a day-to-day basis; it does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliate undue preference over a Transmission Provider's nonaffiliated customers in the energy marketplace.”<sup>26</sup>

9. Here, contrary to Interconnected Generators’ comments, AT’s requested clarification would enable it to engage in a broad range of generic discussions concerning transmission outages. Far from single, isolated communications, AT’s proposal would permit it to engage marketers in a continuous dialogue concerning tentative, future, and only potential outages. In sum, as it prepares for \$3.4 billion in transmission upgrades, AT wants to discuss, plan and coordinate with its Marketing and Energy Affiliates upcoming outages, the impact of outages, transmission capability, maintenance activities and expansion plans before the details of this information is made public via the OASIS. These types of communications are explicitly prohibited under the Prohibited Disclosure Rule, and are not “necessary to operate and maintain the transmission system on a day-to-day basis.” Finally, it appears that AT can simplify its current process by posting a desired outage period on its OASIS or Internet website, engaging in individual conversations with affected generators, and then posting the final outage dates on its OASIS. Under this model, AT would be free to confirm the specific details of publicly announced outages with marketing representatives under Subsection 8.

10. For the reasons stated above, we reject AT’s proposal and clarify that communications between transmission function employees and marketers as AT proposes are outside the scope of Subsection 8. We agree that once the transmission system outage has been scheduled, approved by the Midwest ISO, and publicly posted on the “outage scheduler” section of the Midwest ISO’s OASIS, however, transmission function employees may directly contact marketing representatives to confirm that the generating unit affected by the transmission system outage will be available (or offline, as the case may be) during the transmission system outage.

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<sup>24</sup> 18 C.F.R. § 358.5(b)(1) (2006).

<sup>25</sup> *Id.*

<sup>26</sup> Order No. 2004-B, 108 FERC ¶ 61,118 at P 112 (2004).

The Commission orders:

The Commission hereby clarifies that, prior to scheduling, approval by the Midwest ISO, and public posting on the “outage scheduler” section of the Midwest ISO’s OASIS, communications between transmission function employees and marketers as AT proposes are outside the scope of Subsection 8. Once scheduling, approval, and public posting on the “outage scheduler” section of the Midwest ISO’s OASIS has occurred as stated above, transmission function employees may directly contact marketing representatives to confirm the status of the generating unit during the outage.

By the Commission. Commissioner Moeller not participating.

( S E A L )

Magalie R. Salas,  
Secretary.